

The Honorable Robert J. Bryan

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

BNSF RAILWAY COMPANY,

Plaintiff,

v.

JOEL SACKS, in his Official Capacity as
Director, Washington State Department
of Labor & Industries,

Defendant.

NO. 3:17-cv-5902-RJB

SECOND DECLARATION OF
DAVID JOHNSON IN SUPPORT
OF DEFENDANT'S MOTION TO
DISMISS UNDER FED. R. CIVIL.
P. 12(b)(1)

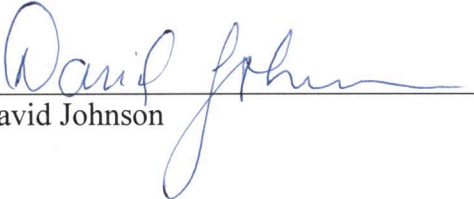
I, David Johnson, declare under the penalty of perjury under the laws of Washington
State that the following is true and correct:

1. I am the Program Manager for the Employment Standards Program of the
Washington State Department of Labor & Industries authorized to state the
Department of Labor & Industries' position in this case.
2. In my previous declaration, I stated the Department has not threatened to enforce its
break rule to BNSF or any railroad and has no plans to do so. This means that the
Department will not enforce its break rule, Washington Administrative Code § 296-
126-092, against any interstate railroad. It may change its position if a final appellate

1 court decision provides that federal law does not preempt WAC 296-126-092. It is
2 speculative to think this would occur and whether the Department would allocate its
3 limited resources to an enforcement action.

- 4 3. The Department has taken no position on whether federal preemption applies and
5 does not intend to take a position on this subject in any private litigation.

6 DATED this 16th day of January 2018 in Tumwater Washington by
7

8 
9 David Johnson